

1                                   BEFORE THE DIRECTOR  
2                                   DEPARTMENT OF CONSUMER AFFAIRS  
3                                   BUREAU OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS  
4                                   STATE OF CALIFORNIA.

5   In the Matter of the Petition for  
6   Reinstatement of:

7   WENDY ANN DOYLE

OAH No. L2008090053

8  
9   Vocational Nurse License No.  
10   VN 80677

11                                   Petitioner.

12                                   DECISION

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14                   The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the  
15   Director of the Department of Consumer Affairs<sup>1</sup> as the final Decision in the above-entitled matter.  
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18                   This Decision shall become effective on January 30, 2009.

19                   IT IS SO ORDERED this 12th day of December, 2008.  
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22                                   *P. J. Harris*

23                                   PATRICIA HARRIS

24                                   Deputy Director, Board/Bureau Support  
25                                   Department of Consumer Affairs  
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28                   <sup>1</sup>Pursuant to Business and Professions Code section 101.1(b), on July 1, 2008, the director became vested with the  
duties, powers, purposes, responsibilities, and jurisdiction of the Board of Vocational Nursing and Psychiatric  
Technicians.

BEFORE THE  
DEPARTMENT OF CONSUMER AFFAIRS  
BUREAU OF VOCATIONAL NURSING  
AND PSYCHIATRIC TECHNICIANS  
STATE OF CALIFORNIA

In the Matter of the Petition for  
Reinstatement of:

WENDY ANN DOYLE

Vocational Nurse License  
No. VN 80677,

Petitioner.

OAH No. L2008090053

**PROPOSED DECISION**

This matter was heard by David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings, on September 11, 2008, in Los Angeles, California.

Shobita Misra, Deputy Attorney General, represented the Department of Justice.

Petitioner Wendy Ann Doyle was present and represented herself.

Evidence was received and the matter was submitted on September 11, 2008. The Administrative Law Judge makes the following factual findings and legal conclusions.

**FACTUAL FINDINGS**

1. On December 7, 1977, the Board of Vocational Nursing and Psychiatric Technicians (Board)<sup>1</sup> issued vocational nurse license number VN 80677 to Wendy Ann Doyle (Petitioner). The license expired on July 31, 2003.

2. On December 15, 2002, in Case No. 6472, the Board issued a default decision revoking Petitioner's license. Petitioner had failed to respond to an accusation alleging that she diverted for her own use controlled substances from the hospital employing her and that she worked as a nurse while under the influence of controlled substances. She diverted drugs

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<sup>1</sup> As of July 1, 2008, the Board became a Bureau within the Department of Consumer Affairs.

in both 1997 and 2001. Petitioner used Ambien, Talwin and oxazepam, all without prescription.

3. Although not a basis for the decision of revocation, Petitioner's record also includes a conviction in April of 2002 of driving under the influence (DUI) of Vicodin.

4. Petitioner is also a registered nurse. She surrendered that license in December of 2003.

5. Petitioner filed an earlier petition for reinstatement of her license on December 22, 2005. By a Decision dated March 6, 2006, the Board denied that petition.

6. The current petition for reinstatement of license was received by the Board on June 18, 2008. Attached to the petition, and discussed in more detail below, are: the Decision reinstating Petitioner's Registered Nursing license; certificates of completion of courses and programs; a college transcript; an order expunging the DUI conviction; a letter documenting completion of a substance abuse program; a job performance evaluation; and character reference letters.

7. Petitioner is currently employed by Aurora Las Encinas Hospital as a charge nurse. She was hired in October 2007. Petitioner also volunteers, on an emergency basis, as a crisis intervention counselor with New Hope Counseling. She started in May 2003. Petitioner has previously held jobs as a Proposition 36 counselor and group facilitator (February to October 2006), and as an adolescent drug and alcohol counselor (September 2006 to October 2007).

8. By a Decision dated November 7, 2006, the Board of Registered Nursing granted a petition submitted by Petitioner, concluding that Petitioner had established her rehabilitation by clear and convincing evidence, and reinstated her Registered Nursing license under probationary terms and conditions. Those terms included, among others, that the probation would last for three years and that Petitioner would function as a registered nurse under the direct supervision of another licensed registered nurse, could not work as a supervisor, undergo physical and mental health examinations to determine her capability to practice safely, abstain from use of psychotropic drugs, undergo drug testing, and participate in a chemical dependency treatment or rehabilitation program.

9. Petitioner has complied with the probationary terms of her Registered Nursing license. Petitioner later received permission from the Board of Registered Nursing to work as a charge nurse and to administer medications.

10. Petitioner submitted certificates of completion of 32 hours of continuing education courses from October 2007 through April 2008. Since her license was revoked, Petitioner has completed a number of courses in 2004 and 2005 at Mt. San Antonio Community College in the fields of psychology and chemical dependency. She took courses at Glendale Community College and obtained a certificate in Substance Abuse Counseling in 2005. She also became certified as a Registered Addiction Specialist through the Breining

Institute in 2005. Petitioner also completed a course in Paraprofessional Mental Health Worker Training at the Pasadena City College in 2004.

11. On April 26, 2002, well before her date of sobriety, Petitioner was arrested for driving while under the influence. She was subsequently convicted of violating Vehicle Code section 23152, subdivision (a), and Health and Safety Code section 11550, subdivision (a), both misdemeanors. She successfully completed probation in that case, and on January 11, 2006, her conviction was expunged pursuant to Penal Code section 1203.4.

12. Petitioner completed an intensive drug and alcohol treatment program at IMPACT in Pasadena, which lasted from September 2003 through January 2005. Her sobriety date is September 11, 2003. The program manager praised Petitioner's positive attitude, high degree of motivation, and commitment to recovery.

13. Petitioner submitted a two-month performance evaluation by her supervisor on March 20, 2008. This comprehensive evaluation includes 58 specific subjects, in which Petitioner has been graded, at a minimum, as meeting expectations and, in some subjects, as exceeding or substantially exceeding requirements.

14. The same supervisor wrote a letter of reference in May 2008, indicating that she has supervised Petitioner for over one year and that Petitioner performs independently and efficiently, works well with staff and patients, and is professional, knowledgeable and responsible. She recommends reinstatement of the license. Reference letters from the executive director of New Hope counseling center and the program manager of Shield for Families comment favorably on Petitioner's skills in communication, compassion, knowledge, enthusiasm and work ethic. A co-volunteer crisis counselor also writes that Petitioner has excellent counseling skills.

15. Petitioner follows a 12-step program, in which she has completed all 12 steps and daily works the first three steps. She attends meetings of Pills Anonymous two times per week and has a sponsor.

16. Petitioner demonstrated an understanding of the process whereby her suffering from migraines many years ago led her to self-medicate, as well as the destructive effect it had on herself, her family, her career and her life. She accepts full responsibility for the acts that resulted in the revocation of her licenses. Petitioner has developed a capable support system and now has a well-rounded life.

17. Petitioner indicated that she would like her vocational nursing license to be reinstated because she is proud of the hard work it took to obtain the license, and as an indication that the license should not be considered as revoked but, rather, as active. However, she indicated that she would need relief from the requirement to practice under the license, as she intends to continue in her position as a registered nurse.

## LEGAL CONCLUSIONS

1. Under Business and Professions Code section 2878.7, subdivision (b), Petitioner has the burden of establishing by clear and convincing evidence that she is entitled to the requested relief.

2. Petitioner clearly and convincingly established that cause exists to reinstate her license, pursuant to Business and Professions Code section 2878.7, and California Code of Regulations, title 16, section 2522.5, subdivision (b). Petitioner clearly and convincingly demonstrated that she is in control of her substance addiction. No evidence of misconduct subsequent to her discipline was presented. More than seven years have elapsed since the last misconduct that led to the surrender of her license. Under these circumstances, public protection will not be jeopardized by reinstating Petitioner's license. (Factual Findings 1-17.)

3. However, the public will be fully protected only if such reinstatement is on a probationary basis. Both Government Code section 11522, and Business and Professions Code section 2878.7, subdivision (d), provide the authority to reinstate a previously revoked license upon appropriate "terms and conditions." Petitioner's past misconduct was the result of a drug addiction, and she has been sober a moderate period of time. Thus, a two-year probation is warranted, with terms and conditions including that she comply with the Board's addiction recovery program. The conditions will be modified to permit Petitioner to continue in her present employment. Further, as Petitioner's license expired more than four years ago, under Business and Professions Code section 2892.4, she is required to take and pass the licensing exam. (Factual Findings 1-17.)

## ORDER

The petition for reinstatement of Wendy Ann Doyle (vocational nurse license number VN 80677) is hereby GRANTED, as follows:

Petitioner's license is reinstated; the reinstated license is immediately revoked; however, the revocation is stayed for a period of two (2) years on the following terms and conditions:

i. Take and pass licensure examination

As a condition for reinstatement of a license, Petitioner shall take and pass the licensure exam currently required of new applicants prior to resuming practice. Petitioner shall pay the established examination and licensing fees.

All standard terms or any other terms of probation shall be tolled until Petitioner has successfully passed the licensure examination and notice of licensure has been mailed to Petitioner by the Bureau. Petitioner's failure to pass the licensure examination within two (2) years shall be considered a violation of her probationary status.



2. Chemical dependency support/recovery groups

Within five (5) days of the effective date of the Decision, Petitioner shall begin attendance at a chemical dependency support group (e.g. Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Group), or may continue at any such groups she is attending. Verified documentation of attendance shall be submitted by Petitioner with each quarterly report. Petitioner shall continue attendance in such a group for the duration of probation.

3. Abstain from controlled substances

Petitioner shall completely abstain from the personal use or possession of controlled substances, as defined in the California Uniform Controlled Substances Act, and dangerous drugs, as defined in Section 4021 and 4022 of the Business and Professions Code, except when lawfully prescribed by a licensed practitioner for a bona fide illness.

4. Abstain from use of alcohol

Petitioner shall completely abstain from the use of alcoholic beverages during the period of probation.

5. Submit biological fluid samples

Petitioner shall immediately submit to biological fluid testing, at Petitioner's cost, upon request by the Bureau or its designee. There will be no confidentiality in test results; positive test results will be immediately reported to the Bureau and the Petitioner's current employer.

6. Obey all laws

Petitioner shall obey all federal, state and local laws, including all statutes and regulations governing the license. Petitioner shall submit, in writing, a full and detailed account of any and all violations of the law to the Bureau within five (5) days of occurrence. To ensure compliance with this term, Petitioner shall submit two (2) completed fingerprint cards and the applicable fingerprint processing fees to the Bureau within thirty (30) days of the effective date of the decision, unless the Bureau determines that fingerprint cards were already submitted by the Petitioner as part of her licensure application process effective July 1, 1996. Petitioner shall also submit a recent 2" x 2" photograph of herself within thirty (30) days of the effective date of the decision.

7. Compliance with probation program and quarterly report requirements

Petitioner shall fully comply with terms and conditions of the probation established by the Bureau and shall cooperate with the representatives of the Bureau in its monitoring and investigation of the Petitioner's compliance with the Probation Program.

Petitioner shall submit quarterly reports, under penalty of perjury, in a form required by the Bureau. The reports shall certify and document compliance with all the conditions of probation.

8. Notification of address and telephone number change(s)

Petitioner shall notify the Bureau, in writing, within five (5) days of a change of residence or mailing address, of her new address and any change in her work and/or home telephone numbers.

9. Notification of residency or practice outside of state

Petitioner shall notify the Bureau, in writing, within five (5) days, if she leaves California to reside or practice in another state. Petitioner shall notify the Bureau, in writing, within five (5) days, upon her return to California.

The period of probation shall not run during the time Petitioner is residing or practicing outside California.

10. Notification to employer(s)

When currently employed or applying for employment in any capacity in any health care profession, Petitioner shall notify her employer of the probationary status of Petitioner's license. This notification to Petitioner's current health care employer shall occur no later than the effective date of the Decision. Petitioner shall notify any prospective health care employer of her probationary status with the Bureau prior to accepting such employment. This notification shall be by providing the employer or prospective employer with a copy of this Decision.

The Health Care Profession includes, but is not limited to: Licensed Vocational Nurse, Psychiatric Technician, Registered Nurse, Medical Assistant, Paramedic, Emergency Medical Technician, Certified Nursing Assistant, Home Health Aide, and all other ancillary technical health care positions.

Petitioner shall cause each health care employer to submit quarterly reports to the Board. The reports shall be on a form provided by the Bureau, shall include a performance evaluation and such other information as may be required by the Bureau.

Petitioner shall notify the Bureau, in writing, within five (5) days of any change in employment status. Petitioner shall notify the Bureau, in writing, if she is terminated from any nursing or health care related employment with a full explanation of the circumstances surrounding the termination.

11. Interviews/meetings with board representative(s)

During the period of probation, Petitioner shall appear in person at interviews/meetings as directed by the Bureau, or its designated representatives.

12. Employment requirements and limitations

During probation, the Petitioner shall work in her licensed capacity with the Bureau or her licensed capacity with the Board of Registered Nursing in the State of California. This practice shall consist of no less than six (6) continuous months and of no less than twenty (20) hours per week.

While on probation, Petitioner shall not work for a nurses' registry or in any private duty position, a temporary nurse placement agency, as a faculty member in an accredited or approved school of nursing, or as an instructor in a Bureau approved continuing education course except as approved, in writing, by the Bureau. Petitioner shall work only on a regularly assigned, identified and predetermined work site(s) and shall not work in a float capacity except as approved, in writing, by the Bureau.

13. Supervision requirements

Petitioner shall obtain prior approval from the Bureau, before commencing any employment, regarding the level of supervision provided to the Petitioner while employed as a licensed vocational nurse or psychiatric technician.

Petitioner may function as a charge nurse (i.e., work in any healthcare setting as the person who oversees or directs licensed vocational nurses, psychiatric technicians, certified nursing assistants or unlicensed assistive personnel) during the period of probation.

14. Completion of educational course(s)

Petitioner, at her own expense, shall enroll and successfully complete a course(s) substantially related to the violation(s) that resulted in the license surrender no later than the end of the first year of probation, or Petitioner shall be suspended from practice, until she has enrolled in and has successfully completed the specified coursework.

The coursework shall be in addition to that required for license renewal. The Bureau shall notify Petitioner of the course content and number of contact hours required. Within thirty (30) days of the Bureau's written notification of assigned coursework, Petitioner shall submit a written plan to comply with this requirement. The Bureau shall approve such plan prior to enrollment in any course of study.

Upon successful completion of the course, Petitioner shall cause the instructor to furnish proof to the Bureau within thirty (30) days of course completion.



15. Maintenance of valid license

Petitioner shall, at all times while on probation, maintain an active current license with the Bureau, including any period during which suspension or probation is tolled.


Should Petitioner's license, by operation of law or otherwise, expire, upon renewal or reinstatement, Petitioner's license shall be subject to any and all terms of this probation not previously satisfied.

16. Cost recovery requirements –Does not apply.

17. Violation of probation/Completion of probation

If Petitioner violates the conditions of her probation, the Bureau after giving Petitioner notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Petitioner's license. If, during the period of probation, an accusation or petition to revoke has been filed against Petitioner's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Petitioner's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Bureau. Upon successful completion of probation, Petitioner's license will be fully restored.

DATED: October 30, 2008.

  
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DAVID B. ROSENMAN  
Administrative Law Judge  
Office of Administrative Hearings